

SCHOOLS: Board of directors of consolidated school districts have authority to sell property of an annexed school district.

May 12, 1943.



Hon. J. P. Smith
Prosecuting Attorney
Webster County
Marshfield, Missouri

Dear Mr. Smith:

The Attorney-General wishes to acknowledge receipt of your letter of May 7, 1943, in which you request an opinion of this Department. Your request for an opinion, omitting caption and signature, is as follows:

"A school house and grounds of a district that is voted into a consolidated district - who has the right to sell building and grounds that was owned by the district and how?"

There seems to be no direct statute which specifically provides for the disposition of the property of a school district which has been annexed to a consolidated school district. However, by referring to several sections of the statute we can arrive at a solution to your problem.

We first wish to cite you to Section 10497, R. S. Mo. 1939, which provides as follows:

"Whenever by reason of the formation of any consolidated school district a portion of the territory of any school District has been incorporated in the consolidated district, the inhabitants of the remaining parts of the districts shall proceed in accordance with section 10486, providing for the annexation to

city school districts and the consolidated district shall be governed by the same provisions as govern city school districts in such cases. The inhabitants of the remaining parts of the districts may also annex themselves to any other adjoining district or districts by filing a petition asking to be so annexed with the clerk or clerks of the district or districts to which they desire to be annexed and by also filing a copy of all such petitions with the clerk of the county court: Provided, that in the formation of any consolidated school district, as provided in this article, no district shall be divided unless the part left shall contain at least eight square miles of territory and twenty children of school age, or an assessed valuation of fifty thousand dollars and twenty children of school age."

As can be seen from the above quoted statute direct reference is made to parts of a school district which have not been incorporated in the formation of a new consolidated school district. It will further be noted that such remaining parts of the school district may be annexed to the consolidated district in accordance with the provision of Section 10486, R. S. Mo. 1939. Furthermore, it is provided in this section that the consolidated school district shall be governed by the same provisions as govern city school districts in such cases. Therefore it is necessary that we inspect Section 10486, supra. Section 10486 refers to the annexation to school districts when corporate limits are extended, and will not aid us in arriving at the power of disposition of the school property of the annexed school district. However, since Section 10497, supra, states that the consolidated districts shall be governed by the same provisions as govern city districts in such cases, we will next inspect Section 10484, R. S. Mo. 1939, which is entitled "Annexation to town and city districts," and which section provides as follows:

"Whenever an entire school district, or a part of a district adjoining any city, town or village school district, desires to be attached thereto for

school purposes, upon the reception of a petition setting forth such fact and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting for said purpose by giving notice as required by section 10418. Should a majority of the votes cast favor such annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said city, town or village school district; whereupon the board of such city, town or village district shall meet to consider the advisability of receiving such territory, and should a majority of all the members of said board favor such annexation, the boundary lines of such city or town school district shall from that date be changed so as to include said territory, and said board shall immediately notify the clerk of said district which has been annexed, in whole or in part, of its action. In case an entire district is thus annexed, all property and money on hand thereto belonging shall immediately pass into the possession of the board of said city or town school district; but should only a part of a district be annexed thereto, said part shall relinquish all claim and title to any part of the school property and money on hand belonging to said original district, and that portion of the district remaining must contain within its limits thirty children and thirty thousand dollars assessed valuation, or thirty children and nine square miles of territory. The voting at said special school meeting shall be by ballot, as provided for in section 10467, and the ballots shall be 'for annexation' and 'against annexation,' when the whole district is to be annexed, but if only a part is to be annexed, the ballots shall read 'for release' and 'against release.'

Attention is called to the provision in the statute above, that where an entire district (which apparently is the instant case) is annexed to any city, town or village school district, that all property and money on hand thereto belonging, shall immediately pass into the hands of the annexing district. In other words, in the instant case when the school district was annexed by the consolidated school district, all of the property or money belonging to such annexed district immediately became the property of the consolidated district. Therefore, the board of directors of such consolidated school district will have the management and control over such newly acquired property. As to the right of the directors of such consolidated school district to dispose of such property, we will cite you to the case of Crow v. Consolidated School District No. 7, 36 S. W. (2d) 676, l. c. 678, in which we find the following language of the court:

"But the power to establish schools necessarily carries with it the power to abandon other schools no longer required, and said section confers upon the board the power to dispose of such property."

In the decision above the court also made the following statement:

"But in our opinion Section 11241 (R. S. Mo. 1919) was really intended to give to the board of education in consolidated school districts full power in the matter of selecting schoolhouse sites or changing sites whenever, in their judgment, such change should become necessary." (Citing cases.)

The above quotation is cited in this opinion for the purpose of showing that the court in the Crow case felt that Section 11241, R. S. Mo. 1919, would apply in this case. Section 11241, R. S. Mo. 1919, is now known as Section 10471, R. S. Mo. 1939. Such section prescribes the following:

"When the demands of the district require more than one public school building therein, the board shall, as

soon as sufficient funds have been provided therefor, establish an adequate number of primary or ward schools, corresponding in grade to those of other public school districts, and for this purpose the board shall divide the school district into school wards and fix the boundaries thereof, and the board shall select and procure a site in each newly formed ward and erect a suitable school building thereon and furnish the same; and the board may also establish schools of a higher grade, in which studies not enumerated in section 10627 may be pursued; and whenever there is within the district any school property that is no longer required for the use of the district, the board is hereby authorized to advertise, sell and convey the same, and the proceeds derived therefrom shall be placed to the credit of the building fund of such district."

As will be noted from the last clause in the above statute, the board of the consolidated school district is authorized to advertise, sell and convey property in the school district which is no longer required to be used by such district.

Under the statutes and case cited in the above opinion, we are of the opinion that the board of directors of a consolidated district which has annexed another district, has the power and authority to dispose of such property if it is no longer needed for school purposes in such consolidated district.

Conclusion

Therefore, it is the opinion of this Department that the board of directors of the consolidated district which has annexed another district, has the right to sell the building and grounds that were owned by the district annexed, provided such

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property is no longer required to be used by the consolidated school district.

Respectfully submitted,

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APPROVED:

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JSP:EG